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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION FOUR

In re the Marriage of CARL A. WESCOTT  
and MONETTE R. STEPHENS.

CARL A. WESCOTT,

Appellant,

v.

MONETTE R. STEPHENS,

Respondent.

A152932

(City & County of San Francisco  
Super. Ct. No. FDI-14-781666)

Carl A. Wescott, appearing in propria persona, appeals the denial of one of his many motions to modify previously ordered child and spousal support. He contends the court erred by failing to consider whether changed circumstances, including allegations of recent homelessness, bankruptcy, and qualification for public assistance, affected his ability to pay. In preparing the record on appeal, however, Wescott elected to proceed without a reporter's transcript and designated only a limited clerk's transcript. Wescott's failure to provide an adequate record is fatal to his appeal. Accordingly, we affirm the order denying Wescott's request for modification of spousal support.

**Background**

On October 11, 2017, Wescott filed a request for modification of his support obligations. His petition states that he is currently ordered to pay \$24,654 per month in Child support and \$29,000 per month in spousal support. He writes, "I am now homeless; I have lost my office; I filed chapter 7 bankruptcy and have zero income and under \$1,000 of possessions; I am now on food stamps (aka CalFresh) and other public

assistance to survive.” On October 13, 2017, the court filed an order denying the petition. The order states, “No change of circumstances presented other than office loss. Other financial circumstances are same as those presented previously.” Wescott timely filed a notice of appeal. On November 28, 2017, Wescott, who is subject to a prefiling order under Code of Civil Procedure section 391.7, was granted permission to prosecute this appeal.

### **Discussion**

“ ‘A motion for modification of spousal support may only be granted if there has been a material change of circumstances since the last order. [Citation.] Otherwise, dissolution cases would have no finality and unhappy former spouses could bring repeated actions for modification with no burden of showing a justification to change the order. Litigants “ ‘are entitled to attempt, with some degree of certainty, to reorder their finances and life style [*sic*] in reliance upon the finality of the decree.’ ” [Citation.] Absent a change of circumstances, a motion for modification is nothing more than an impermissible collateral attack on a prior final order.’ ” (*In re Marriage of Khera & Sameer* (2012) 206 Cal.App.4th 1467, 1479.) “ ‘The moving party has the burden of showing a material change of circumstances since the last order was made.’ ” (*Id.* at p. 1480.) “Circumstances accounted for in the previous order cannot constitute a change of circumstances. [Citation.] ‘Appellate review of orders modifying spousal support is governed by an abuse of discretion standard, and such an abuse occurs when a court modifies a support order without substantial evidence of a material change of circumstances.’ ” (*In re Marriage of Lautsbaugh* (1999) 72 Cal.App.4th 1131, 1133.)

The appellate record prepared by Wescott does not enable the court to evaluate the existence of changed circumstances. The appellate record consists solely of the register of actions, Wescott’s request for an order and the order denying his request. Although Wescott attached numerous exhibits to his notice designating the record on appeal, those documents are not properly before us. There is no indication that the photocopies of various deeds and emails were ever submitted to the trial court. A “Sworn Declaration of Carl Wescott” included in the clerk’s transcript was filed on January 18, 2018, in advance

of a hearing apparently set for January 23 on yet another motion for modification of spousal support that is not now before us.

We are unable to determine from the register of actions when the original support order was entered, although it appears that the order may have been modified in October 2014. Because the order is not in the record, we do not know the terms of that order or the financial circumstances on which it was based. The register shows that since October 2014, Wescott has filed numerous requests to modify the spousal and child support order that were apparently denied or taken off calendar. As late as July 2015, Wescott filed a request for order “reducing support to zero.” On October 11, 2016, the register shows that a request for modification of support filed by Wescott was denied based on the absence of changed circumstances. Because he has not presented this court with evidence from the trial court record that supports his arguments, Wescott has not met his burden of establishing that the court abused its discretion in finding that there was no change of circumstances when it again denied a request for modification a year later.

#### **Disposition**

The order denying the request to modify child and spousal support is affirmed.

POLLAK, P. J.

WE CONCUR:

TUCHER, J.

BROWN, J.